

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5997 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LABHU HARI MAKWANA

Versus

MORBI MUNICIPALITY

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Appearance:

MR DC RAVAL for Petitioner  
None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/98

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ORAL JUDGEMENT

1. Heard the learned counsel for the petitioner and perused the special civil application. Reply to the special civil application has not been filed nor anybody is present on behalf of the respondent to make the submissions.
2. The petitioner was appointed in the year 1970 in the office of the respondent-Municipality. He was

initially appointed as a sweeper. In the year 1981, he was appointed by promotion to the post of peon. Initially he was appointed as a peon on temporary basis but that appointment continued from time to time by various orders without there being any break. However, on 1st April, 1986, he was appointed on regular basis as a peon on probation. The probation period was of three months, which the petitioner successfully completed and thereafter he was appointed on permanent basis as a peon from 1st July, 1986.

3. Vide resolution of the Controlling Committee of the respondent-Municipality dated 23rd September, 1986, it was ordered that the resolution appointing the petitioner as peon with effect from 1st July, 1986 should be cancelled and the petitioner should be reverted to his original post. This resolution was sent for approval to the General Board and the General Board also confirmed the same on 24th October, 1986. Hence, this special civil application before this Court.

4. This Court has protected the petitioner by grant of interim relief and for all these years, he is working on the post of peon.

5. One of the contentions made by the learned counsel for the petitioner is that the resolution dated 23rd September, 1986 of the Controlling Committee and the resolution of the General Board dated 24th October, 1986 have been passed without giving any notice or opportunity of hearing to the petitioner. The petitioner has been given the appointment on the post of peon in the year 1981. Then he was given the appointment on probation on 1st April, 1986 and on permanent basis from 1st July, 1986 and the resolutions aforesaid result in reversion of the petitioner from the post of peon to sweeper, which results in civil consequences. These resolutions should have been passed only after giving notice and an opportunity of hearing to the petitioner.

6. I find sufficient merits in this contention of the learned counsel for the petitioner.

7. The fact is that from 1981 the petitioner was continuously working on the post of peon and for whatever reason if the decision to appoint the petitioner as peon has to be recalled or reviewed, then as it results in the civil consequences to the petitioner, he should have been given notice and an opportunity of hearing, which precisely has not been done in the present case either by the Controlling Committee or the General Board.

8. Only on this ground, this writ petition deserves acceptance and the same is allowed. The resolution, annexure 'C' dated 23rd September, 1986 of the Controlling Committee and the resolution, annexure 'D' dated 24th October, 1986 of the General Board are quashed and set aside. Rule is made absolute with no order as to costs.

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